

## BILL

1           **SECTION 245.** 938.20 (8) (a) of the statutes is amended to read:

2           938.20 **(8)** (a) If a juvenile is held in custody, the intake worker shall notify the  
3 juvenile's parent, guardian, ~~and legal custodian,~~ and Indian custodian of the reasons  
4 for holding the juvenile in custody and of the juvenile's whereabouts unless there is  
5 reason to believe that notice would present imminent danger to the juvenile. The  
6 parent, guardian, ~~and legal custodian,~~ and Indian custodian shall also be notified of  
7 the time and place of the detention hearing required under s. 938.21, the nature and  
8 possible consequences of the hearing, ~~and the right to present and cross-examine~~  
9 witnesses at the hearing, and, in the case of a parent or Indian custodian of an Indian  
10 juvenile who is the subject of an Indian juvenile custody proceeding, as defined s.  
11 938.028 (2) (b), the right to counsel under s. 938.028 (4) (b). If the parent, guardian,  
12 ~~or legal custodian,~~ or Indian custodian is not immediately available, the intake  
13 worker or another person designated by the court shall provide notice as soon as  
14 possible.

15           **SECTION 246.** 938.207 (1g) of the statutes is created to read:

16           938.207 **(1g)** INDIAN JUVENILE; PLACEMENT PREFERENCES. An Indian juvenile in  
17 need of protection or services under s. 938.13 (4), (6), (6m), or (7) who is held in  
18 physical custody under s. 938.205 (1) shall be placed in compliance with s. 938.028  
19 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the person responsible for  
20 determining the placement finds good cause, as described in s. 938.028 (6) (d), for  
21 departing from the order of placement preference under s. 938.028 (6) (a) or finds that  
22 emergency conditions necessitate departing from that order. When the reason for  
23 departing from that order is resolved, the Indian juvenile shall be placed in  
24 compliance with the order of placement preference under s. 938.028 (6) (a) or, if  
25 applicable, s. 938.028 (6) (b).

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1       **SECTION 247.** 938.21 (2) (title) of the statutes is amended to read:

2       938.21 (2) (title) PROCEEDINGS CONCERNING ~~RUNAWAY OR~~ DELINQUENT JUVENILES.

3       **SECTION 248.** 938.21 (2) (ag) of the statutes is amended to read:

4       938.21 (2) (ag) Proceedings concerning a juvenile who comes within the  
5 jurisdiction of the court under s. 938.12 or 938.13 ~~(7) or (12) or (14)~~ shall be conducted  
6 according to this subsection.

7       **SECTION 249.** 938.21 (3) (ag) of the statutes is amended to read:

8       938.21 (3) (ag) Proceedings concerning a juvenile who comes within the  
9 jurisdiction of the court under s. 938.13 (4), (6), (6m), or ~~(14)~~ (7) shall be conducted  
10 according to this subsection.

11       **SECTION 250.** 938.21 (3) (am) of the statutes is amended to read:

12       938.21 (3) (am) The parent, guardian, ~~or~~ legal custodian, or Indian custodian  
13 may waive his or her right to participate in the hearing under this section. After any  
14 waiver, a rehearing shall be granted at the request of the parent, guardian, legal  
15 custodian, Indian custodian, or any other interested party for good cause shown.

16       **SECTION 251.** 938.21 (3) (b) of the statutes is amended to read:

17       938.21 (3) (b) If present at the hearing, a copy of the petition or request shall  
18 be given to the parent, guardian, ~~or~~ legal custodian, or Indian custodian, and to the  
19 juvenile if he or she is 12 years of age or older, before the hearing begins. Prior notice  
20 of the hearing shall be given to the juvenile's parent, guardian, ~~and~~ legal custodian,  
21 and Indian custodian and to the juvenile if he or she is 12 years of age or older under  
22 s. 938.20 (8).

23       **SECTION 252.** 938.21 (3) (d) of the statutes is amended to read:

24       938.21 (3) (d) Prior to the commencement of the hearing, the court shall inform  
25 the parent, guardian, ~~or~~ legal custodian, or Indian custodian of the allegations that

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1 have been made or may be made, the nature and possible consequences of this  
2 hearing as compared to possible future hearings, the right to present, confront, and  
3 cross-examine witnesses, and the right to present witnesses and, in the case of a  
4 parent or Indian custodian of an Indian juvenile who is the subject of an Indian  
5 juvenile custody proceeding, as defined in s. 938.028 (2) (b), the right to counsel under  
6 s. 938.028 (4) (b).

7 **SECTION 253.** 938.21 (3) (e) of the statutes is amended to read:

8 938.21 (3) (e) If the parent, guardian, or legal custodian, Indian custodian, or  
9 the juvenile is not represented by counsel at the hearing and if the juvenile is  
10 continued in custody as a result of the hearing, the parent, guardian, legal custodian,  
11 Indian custodian, or juvenile may request through counsel subsequently appointed  
12 or retained or through a guardian ad litem that the order to hold the juvenile in  
13 custody be reheard. If the request is made, a rehearing shall take place as soon as  
14 possible. An order to hold the juvenile in custody shall be reheard for good cause,  
15 whether or not counsel was present.

16 **SECTION 254.** 938.21 (5) (d) 1. of the statutes is renumbered 938.21 (5) (d) and  
17 amended to read:

18 938.21 (5) (d) If the court finds that any of the circumstances specified in s.  
19 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing  
20 under s. 938.38 (4m) within 30 days after the date of that finding to determine the  
21 permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~  
22 ~~agency responsible for preparing the permanency plan shall file the permanency~~  
23 ~~plan with the court not less than 5 days before the date of the hearing.~~

24 **SECTION 255.** 938.21 (5) (d) 2. of the statutes is repealed.

25 **SECTION 256.** 938.21 (5) (d) 3. of the statutes is repealed.

as affected by 2009 Wisconsin Act 28<sup>^</sup>

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1           **SECTION 257.** 938.23 (2g) of the statutes is created to read:

2           **938.23 (2g) RIGHT OF INDIAN JUVENILE'S PARENT OR INDIAN CUSTODIAN TO COUNSEL.**

3           Whenever an Indian juvenile is the subject of a proceeding under s. 938.13 (4), (6),  
4           (6m), or (7) involving the removal of the Indian juvenile from the home of his or her  
5           parent or Indian custodian or the placement of the Indian juvenile in an out-of-home  
6           care placement, the Indian juvenile's parent or Indian custodian shall have the right  
7           to be represented by counsel as provided in sub. (4).

8           **SECTION 258.** 938.23 (3) of the statutes is amended to read:

9           **938.23 (3) POWER OF THE COURT TO APPOINT COUNSEL.** Except as provided in this  
10          subsection, at any time, upon request or on its own motion, the court may appoint  
11          counsel for the juvenile or any party, unless the juvenile or the party has or wishes  
12          to retain counsel of his or her own choosing. The Except as provided in sub. (2g), the  
13          court may not appoint counsel for any party other than the juvenile in a proceeding  
14          under s. 938.13.

15          **SECTION 259.** 938.23 (4) of the statutes is amended to read:

16          **938.23 (4) PROVIDING COUNSEL.** If a juvenile has a right to be represented by  
17          counsel or is provided counsel at the discretion of the court under this section and  
18          counsel is not knowingly and voluntarily waived, the court shall refer the juvenile  
19          to the state public defender and counsel shall be appointed by the state public  
20          defender under s. 977.08 without a determination of indigency. In any situation  
21          under sub. (2g) in which a parent 18 years of age or over is entitled to representation  
22          by counsel; counsel is not knowingly and voluntarily waived; and it appears that the  
23          parent is unable to afford counsel in full, or the parent so indicates; the court shall  
24          refer the parent to the authority for indigency determinations specified under s.  
25          977.07 (1). In any other situation under this section in which a person has a right

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1 to be represented by counsel or is provided counsel at the discretion of the court,  
2 competent and independent counsel shall be provided and reimbursed in any  
3 manner suitable to the court regardless of the person's ability to pay, except that the  
4 court may not order a person who files a petition under s. 813.122 or 813.125 to  
5 reimburse counsel for the juvenile who is named as the respondent in that petition.

6 **SECTION 260.** 938.235 (4) (a) 7. of the statutes is amended to read:

7 938.235 (4) (a) 7. Petition for relief from a judgment terminating parental  
8 rights under s. 48.028 or 48.46.

9 **SECTION 261.** 938.24 (2r) (title) of the statutes is amended to read:

10 938.24 (2r) (title) ~~AMERICAN~~ INDIAN JUVENILE; NOTIFICATION OF TRIBAL COURT.

11 **SECTION 262.** 938.24 (2r) (a) (intro.) of the statutes is amended to read:

12 938.24 (2r) (a) (intro.) If the intake worker determines as a result of the intake  
13 inquiry that the juvenile is an ~~American~~ Indian juvenile who has allegedly  
14 committed a delinquent act and that all of the following circumstances apply, the  
15 intake worker shall promptly notify the clerk of the tribal court under subd. 1., a  
16 person who serves as the tribal juvenile intake worker, or a tribal prosecuting  
17 attorney that the juvenile has allegedly committed a delinquent act under those  
18 circumstances:

19 **SECTION 263.** 938.24 (2r) (a) 1. of the statutes is amended to read:

20 938.24 (2r) (a) 1. At the time of the delinquent act the juvenile was under an  
21 order of a ~~tribe's~~ tribal court, other than a tribal court order relating to adoption,  
22 physical placement or visitation with the juvenile's parent, or permanent  
23 guardianship.

24 **SECTION 264.** 938.24 (2r) (a) 2. of the statutes is amended to read:

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1        938.24 (2r) (a) 2. At the time of the delinquent act the juvenile was physically  
2        outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe of the tribal  
3        court and any off-reservation trust land of either that Indian tribe or a member of  
4        that Indian tribe as a direct consequence of a tribal court order under subd. 1.,  
5        including a tribal court order placing the juvenile in the home of a relative of the  
6        juvenile who on or after the date of the tribal court order resides physically outside  
7        the boundaries of a reservation and off-reservation trust land.

8        **SECTION 265.** 938.24 (2r) (b) of the statutes is amended to read:

9        938.24 (2r) (b) If the intake worker is notified by an official of the Indian tribe  
10       that a petition relating to the delinquent act has been or may be filed in tribal court,  
11       the intake worker shall consult with tribal officials, unless the intake worker  
12       determines under sub. (4) that the case should be closed. After the consultation, the  
13       intake worker shall determine whether the best interests of the juvenile and of the  
14       public would be served by having the matter proceed solely in tribal court. If the  
15       intake worker determines that the best interests of the juvenile and of the public  
16       would be served by having the matter proceed solely in tribal court, the intake  
17       worker shall close the case. If the intake worker determines that the best interests  
18       of the juvenile and of the public would not be served by having the matter proceed  
19       solely in tribal court, the intake worker shall proceed under sub. (3) or (4).

20       **SECTION 266.** 938.243 (1) (e) of the statutes is amended to read:

21       938.243 (1) (e) The right of ~~the juvenile~~ to counsel under s. 938.23.

22       **SECTION 267.** 938.25 (2g) (title) of the statutes is amended to read:

23       938.25 (2g) (title) ~~AMERICAN INDIAN JUVENILE; CONSULTATION WITH TRIBAL COURT.~~

24       **SECTION 268.** 938.255 (1) (cm) of the statutes is amended to read:

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1           938.255 (1) (cm) If the petition is initiating proceedings ~~other than proceedings~~  
2 ~~under s. 938.12, 938.125 or 938.13 (12)~~ under s. 938.13 (4), (6), (6m), or (7), whether  
3 the juvenile may be subject to the federal Indian Child Welfare Act, 25 USC 1901 to  
4 1963, and, if the juvenile may be subject to that act, the names and addresses of the  
5 juvenile's Indian custodian, if any, and Indian tribe, if known.

6           **SECTION 269.** 938.255 (1) (cr) 1. a. of the statutes is amended to read:

7           938.255 (1) (cr) 1. a. The juvenile is an ~~American~~ Indian juvenile.

8           **SECTION 270.** 938.255 (1) (cr) 1. b. of the statutes is amended to read:

9           938.255 (1) (cr) 1. b. At the time of the alleged delinquent act, the juvenile was  
10 under an order of a ~~tribe's~~ tribal court, other than a tribal court order relating to  
11 adoption, physical placement or visitation with the juvenile's parent, or permanent  
12 guardianship.

13          **SECTION 271.** 938.255 (1) (cr) 1. c. of the statutes is amended to read:

14          938.255 (1) (cr) 1. c. At the time of the delinquent act the juvenile was  
15 physically outside the boundaries of ~~that tribe's~~ the reservation of the Indian tribe  
16 of the tribal court and any off-reservation trust land of either that Indian tribe or a  
17 member of that Indian tribe as a direct consequence of a tribal court order under  
18 subd. 1. b., including a tribal court order placing the juvenile in the home of a relative  
19 of the juvenile who on or after the date of the tribal court order resides physically  
20 outside the boundaries of a reservation and off-reservation trust land.

21          **SECTION 272.** 938.255 (1) (cr) 2. of the statutes is amended to read:

22          938.255 (1) (cr) 2. If the statement under subd. 1. is included in the petition and  
23 if the intake worker, district attorney, or corporation counsel has been notified by an  
24 official of the Indian tribe that a petition relating to the delinquent act has been or

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1 may be filed in tribal court with respect to the alleged delinquent act, a statement  
2 to that effect.

3 **SECTION 273.** 938.255 (1) (g) of the statutes is created to read:

4 938.255 (1) (g) If the petitioner knows or has reason to know that the juvenile  
5 is an Indian juvenile, if the juvenile is alleged to come within the provisions of s.  
6 938.13 (4), (6), (6m), or (7), and if the juvenile has been removed from the home of his  
7 or her parent or Indian custodian, reliable and credible information showing that  
8 continued custody of the juvenile by the juvenile's parent or Indian custodian is likely  
9 to result in serious emotional or physical damage to the juvenile under s. 938.028 (4)  
10 (d) 1. and reliable and credible information showing that active efforts under s.  
11 938.028 (4) (d) 2. have been made to prevent the breakup of the Indian family and  
12 that those efforts have proved unsuccessful. The petition shall set forth with  
13 specificity both the information required under this paragraph and the information  
14 required under par. (f).

15 **SECTION 274.** 938.255 (2) of the statutes is amended to read:

16 938.255 (2) If any of the facts in sub. (1) (a) to (cr) ~~and~~, (f), and (g) are not known  
17 or cannot be ascertained by the petitioner, the petition shall so state.

18 **SECTION 275.** 938.255 (4) of the statutes is amended to read:

19 938.255 (4) COPY TO JUVENILE, PARENTS, AND OTHERS. A copy of the petition shall  
20 be given to the juvenile and to the parents, guardian, legal custodian and physical  
21 custodian. If the juvenile is an Indian juvenile who is alleged to come within the  
22 provisions of s. 938.13 (4), (6), (6m), or (7), and who has been removed from the home  
23 of his or her parent or Indian custodian, a copy of the petition shall also be given to  
24 the Indian juvenile's Indian custodian and tribe.

25 **SECTION 276.** 938.27 (3) (a) 1. of the statutes is amended to read:



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1           938.27 (3) (a) 1. The court shall notify, under s. 938.273, the juvenile, any  
2     parent, guardian, and legal custodian of the juvenile, any foster parent, treatment  
3     foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile, and  
4     any person specified in par. (b) or (d), if applicable, of all hearings involving the  
5     juvenile under this subchapter, except hearings on motions for which notice must be  
6     provided only to the juvenile and his or her counsel. If parents entitled to notice have  
7     the same place of residence, notice to one constitutes notice to the other. The first  
8     notice to any interested party, foster parent, treatment foster parent, or other  
9     physical custodian described in s. 48.62 (2) shall be in writing and may have a copy  
10    of the petition attached to it. Notices of subsequent hearings may be given by  
11    telephone at least 72 hours before the time of the hearing. The person giving  
12    telephone notice shall place in the case file a signed statement of the date and time  
13    notice was given and the person to whom he or she spoke.

14           **SECTION 277.** 938.27 (3) (d) of the statutes is created to read:

15           938.27 (3) (d) If the petition that was filed relates to facts concerning a situation  
16    under s. 938.13 (4), (6), (6m), or (7) involving an Indian juvenile who has been  
17    removed from the home of his or her parent or Indian custodian, the court shall notify,  
18    under s. 938.273, the Indian juvenile's Indian custodian and tribe and that Indian  
19    custodian or tribe may intervene at any point in the proceeding.

20           **SECTION 278.** 938.27 (4) (b) of the statutes is amended to read:

21           938.27 (4) (b) Advise the juvenile and any other party, if applicable, of his or  
22    her right to legal counsel regardless of ability to pay.

23           **SECTION 279.** 938.273 (1) (a) of the statutes of the statutes is amended to read:

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1           938.273 (1) (a) ~~Service~~ Except as provided in pars. (ag), (ar), and (b), service of  
2       summons or notice required by s. 938.27 may be made by mailing a copy of the  
3       summons or notice to the ~~persons~~ person summoned or notified. If

4           (ar) Except as provided in par. (b), if the persons person, other than a person  
5       specified in s. 938.27 (4m), ~~fail~~ fails to appear at the hearing or otherwise to  
6       acknowledge service, a continuance shall be granted, ~~except as provided under par.~~  
7       ~~(b)~~, and service shall be made personally by delivering to the ~~persons~~ person a copy  
8       of the summons or notice; except that if the court determines that it is impracticable  
9       to serve the summons or notice personally, ~~it~~ the court may order service by certified  
10      mail addressed to the last-known ~~addresses~~ address of the ~~persons~~ person.

11           **SECTION 280.** 938.273 (1) (ag) of the statutes is created to read:

12           938.273 (1) (ag) In a situation described in s. 938.27 (3) (d), service of summons  
13      or notice required by s. 938.27 to an Indian juvenile's parent, Indian custodian, or  
14      tribe shall be made as provided in s. 938.028 (4) (a).

15           **SECTION 281.** 938.273 (1) (b) of the statutes is amended to read:

16           938.273 (1) (b) The court may refuse to grant a continuance when the juvenile  
17      is being held in secure custody, but if the court so refuses, ~~it~~ the court shall order that  
18      service of notice of the next hearing be made personally or by certified mail to the  
19      last-known address of the person who failed to appear at the hearing.

20           **SECTION 282.** 938.273 (1) (c) of the statutes is renumbered 938.273 (1) (c)  
21      (intro.) and amended to read:

22           938.273 (1) (c) (intro.) Personal service shall be made at least 72 hours before  
23      the hearing. Mail shall be sent at least 7 days before the hearing, ~~except that when~~  
24      as follows:

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1        1. When the petition is filed under s. 938.13 and the person to be notified lives  
2 outside the state, the mail shall be sent at least 14 days before the hearing.

3        **SECTION 283.** 938.273 (1) (c) 2. of the statutes is created to read:

4        938.273 (1) (c) 2. When a petition under s. 938.13 (4), (6), (6m), or (7) involves  
5 an Indian juvenile who has been removed from the home of his or her parent or  
6 Indian custodian and the person to be notified is the Indian juvenile's parent, Indian  
7 custodian, or tribe, the mail shall be sent so that it is received by the person to be  
8 notified at least 10 days before the hearing or, if the identity or location of the person  
9 to be notified cannot be determined by the U.S. secretary of the interior at least 10  
10 days before the hearing.

11        **SECTION 284.** 938.299 (6) (d) of the statutes is amended to read:

12        938.299 (6) (d) The court may stay the proceedings under this chapter pending  
13 the outcome of the paternity proceedings under subch. IX of ch. 767 if the court  
14 determines that the paternity proceedings will not unduly delay the proceedings  
15 under this chapter and the determination of paternity is necessary to the court's  
16 disposition of the juvenile if the juvenile is found to be in need of protection or services  
17 or if the court determines or has reason to know that the paternity proceedings may  
18 result in a finding that the juvenile is an Indian juvenile and in a petition by the  
19 juvenile's parent, Indian custodian, or tribe for transfer of the proceeding to the  
20 jurisdiction of the tribe.

21        **SECTION 285.** 938.299 (9) (title) of the statutes is amended to read:

22        938.299 (9) (title) ~~AMERICAN~~ INDIAN JUVENILE; TRIBAL COURT INVOLVEMENT.

23        **SECTION 286.** 938.299 (9) (a) of the statutes is amended to read:

24        938.299 (9) (a) If a petition under s. 938.12 or 938.13 (12) includes the  
25 statement in s. 938.255 (1) (cr) 2. or if the court is informed during a proceeding under

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1 s. 938.12 or 938.13 (12) that a petition relating to the delinquent act has been filed  
2 in a ~~tribe's~~ tribal court with respect to a juvenile to whom the circumstances specified  
3 in s. 938.255 (1) (cr) 1. apply, the court shall stay the proceeding and communicate  
4 with the tribal court in which the other proceeding is or may be pending to discuss  
5 which court is the more appropriate forum.

6 **SECTION 287.** 938.299 (10) of the statutes is created to read:

7 938.299 (10) If at any point in a proceeding under s. 938.13 (4), (6), (6m), or (7)  
8 the court determines or has reason to know that the juvenile is an Indian juvenile,  
9 the court shall provide notice of the proceeding to the juvenile's parent, Indian  
10 custodian, and tribe in the manner specified in s. 938.028 (4) (a). The next hearing  
11 in the proceeding may not be held until at least 10 days after receipt of the notice by  
12 the parent, Indian custodian, and tribe or, if the identity or location of the parent,  
13 Indian custodian, or tribe cannot be determined, until at least 10 days after receipt  
14 of the notice by the U.S. secretary of the interior. On request of the parent, Indian  
15 custodian, or tribe, the court shall grant a continuance of up to 20 additional days  
16 to enable the requester to prepare for that hearing.

17 **SECTION 288.** 938.30 (1) of the statutes is amended to read:

18 938.30 (1) TIME OF HEARING. Except as provided in this subsection and s.  
19 938.299 (10), the hearing to determine the juvenile's plea to a citation or a petition  
20 under s. 938.12, 938.125, or 938.13 (12) or (14), or to determine whether any party  
21 wishes to contest an allegation that the juvenile is in need of protection or services  
22 under s. 938.13 (4), (6), (6m), or (7) ~~or (14)~~ shall take place on a date which allows  
23 reasonable time for the parties to prepare but is within 30 days after the filing of a  
24 petition or issuance of a citation for a juvenile who is not being held in secure custody  
25 or within 10 days after the filing of a petition or issuance of a citation for a juvenile

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1 who is being held in secure custody. In a municipal court operated jointly by 2 or more  
2 cities, towns or villages under s. 755.01 (4), the hearing to determine the juvenile's  
3 plea shall take place within 45 days after the filing of a petition or issuance of a  
4 citation for a juvenile who is not being held in secure custody.

5 **SECTION 289.** 938.30 (2) of the statutes is amended to read:

6 938.30 (2) INFORMATION TO JUVENILE AND PARENTS; BASIC RIGHTS; SUBSTITUTION.

7 At or before the commencement of the hearing under this section the juvenile and  
8 the parent, guardian, ~~or legal custodian,~~ or Indian custodian shall be advised of their  
9 rights as specified in s. 938.243 and shall be informed that the hearing shall be to the  
10 court and that a request for a substitution of judge under s. 938.29 must be made  
11 before the end of the plea hearing or is waived. Nonpetitioning parties, including the  
12 juvenile, shall be granted a continuance of the plea hearing if they wish to consult  
13 with an attorney on the request for a substitution of a judge.

14 **SECTION 290.** 938.30 (6) (a) of the statutes is amended to read:

15 938.30 (6) (a) If a petition is not contested, the court, subject to s. 938.299 (10),  
16 shall set a date for the dispositional hearing which allows reasonable time for the  
17 parties to prepare but is no more than 10 days from the plea hearing for a juvenile  
18 who is held in secure custody and no more than 30 days from the plea hearing for a  
19 juvenile who is not held in secure custody. ~~If Subject to s. 938.299 (10),~~ if all parties  
20 consent, the court may proceed immediately with the dispositional hearing. If a  
21 citation is not contested, the court may proceed immediately to enter a dispositional  
22 order.

23 **SECTION 291.** 938.30 (7) of the statutes is amended to read:

24 938.30 (7) CONTESTED PETITIONS OR CITATIONS; DATE FOR FACT-FINDING HEARING.

25 If the petition or citation is contested, the court, subject to s. 938.299 (10), shall set

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1 a date for the fact-finding hearing that allows a reasonable time for the parties to  
2 prepare but is no more than 20 days ~~from~~ after the plea hearing for a juvenile who  
3 is held in secure custody and no more than 30 days ~~from~~ after the plea hearing for  
4 a juvenile who is not held in secure custody.

5 **SECTION 292.** 938.305 of the statutes is amended to read:

6 **938.305 Hearing upon the involuntary removal of a juvenile.**

7 Notwithstanding other time periods for hearings under this chapter, if a juvenile is  
8 removed from the physical custody of the juvenile's parent or guardian under s.  
9 938.19 (1) (c) or (d) 5. without the consent of the parent or guardian, the court, subject  
10 to s. 938.299 (10), shall schedule a plea hearing and fact-finding hearing within 30  
11 days after a request from the parent or guardian from whom custody was removed.  
12 The plea hearing and fact-finding hearing may be combined. This time period may  
13 be extended only with the consent of the requesting parent or guardian.

14 **SECTION 293.** 938.31 (7) (a) of the statutes is amended to read:

15 938.31 **(7)** (a) At the close of the fact-finding hearing, the court, subject to s.  
16 938.299 (10), shall set a date for the dispositional hearing that allows a reasonable  
17 time for the parties to prepare but is no more than 10 days after the fact-finding  
18 hearing for a juvenile in secure custody and no more than 30 days after the  
19 fact-finding hearing for a juvenile not held in secure custody. If Subject to s. 938.299  
20 (10), if all parties consent, the court may immediately proceed with a dispositional  
21 hearing.

22 **SECTION 294.** 938.315 (1) (a) 11. of the statutes is created to read:

23 938.315 **(1)** (a) 11. A continuance, not to exceed 20 days, granted at the request  
24 of the parent, Indian custodian, or tribe of a juvenile whom the court knows or has  
25 reason to know is an Indian juvenile to enable the requester to prepare for a

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**BILL****SECTION 294**

proceeding under s. 938.13 (4), (6), (6m), or (7) involving the out-of-home care placement of the juvenile.

**SECTION 295.** 938.32 (1) (d) 1. of the statutes is renumbered 938.32 (1) (d) and amended to read:

938.32 (1) (d) If the court finds that any of the circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38 (4m) within 30 days after the date of that finding to determine the permanency plan for the juvenile. ~~The agency responsible for preparing the permanency plan shall file the permanency plan with the court not less than 5 days before the date of the hearing.~~

*as affected by 2009 Wisconsin Act 28;*

**SECTION 296.** 938.32 (1) (d) 2. of the statutes ~~is repealed.~~

**SECTION 297.** 938.32 (1) (d) 3. of the statutes ~~is repealed.~~

**SECTION 298.** 938.32 (1) (e) of the statutes is created to read:

938.32 (1) (e) 1. In the case of an Indian juvenile who is the subject of a proceeding under s. 938.13 (4), (6), (6m), or (7), if at the time the consent decree is entered into the Indian juvenile is placed outside the home of his or her parent or Indian custodian under a voluntary agreement under s. 48.63 or is otherwise living outside that home without a court order and if the consent decree maintains the Indian juvenile in that placement or other living arrangement, the consent decree shall include a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child under s. 938.028 (4) (d) 1. and a finding

~~as to whether the county department or agency primarily responsible for providing services to the juvenile has made~~ active efforts under s. 938.028 (4) (d) 2. to prevent

*have been made*

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1 the breakup of the Indian family and that those efforts have proved unsuccessful.

2 The findings under this subdivision shall be in addition to the findings under par. (c)

3 1., except that for the sole purpose of determining whether the cost of providing care

4 for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the

5 findings under this subdivision and the findings under par. (c) 1. shall be considered

6 to be the same findings.

7 2. If the placement or other living arrangement under subd. 1. departs from the

8 order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6)

9 (b), the court shall also find good cause, as described in s. 938.028 (6) (d), for departing

10 from that order.

11 **SECTION 299.** 938.33 (4) (d) of the statutes is created to read:

12 938.33 (4) (d) In the case of a proceeding under s. 938.13 (4), (6), (6m), or (7),

13 if the agency knows or has reason to know that the juvenile is an Indian juvenile who

14 is being removed from the home of his or her parent or Indian custodian, a description

15 of any efforts undertaken to determine whether the juvenile is an Indian juvenile;

16 specific information showing that continued custody of the juvenile by the parent or

17 Indian custodian is likely to result in serious emotional or physical damage to the

18 juvenile, under s. 938.028 (4) (d) 1.; specific information showing that the county

19 department or agency primarily responsible for providing services to the juvenile has

20 made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian

21 juvenile's family and that those efforts have proved unsuccessful; a statement as to whether

22 the out-of-home care placement recommended is in compliance with the order of

23 placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b); and,

24 if the recommended placement is not in compliance with that order, specific



**BILL****SECTION 299**

1 information showing good cause, as described in s. 938.028 (6) (d), for departing from  
2 that order.

3 **SECTION 300.** 938.335 (3j) of the statutes is created to read:

4 938.335 (3j) INDIAN JUVENILE; ACTIVE EFFORTS FINDING. At hearings under this  
5 section involving an Indian juvenile who is the subject of a proceeding under s. 938.13  
6 (4), (6), (6m), or (7), if the agency, as defined in s. 938.38 (1) (a), is recommending  
7 removal of the Indian juvenile from the home of his or her parent or Indian custodian  
8 and placement of the Indian juvenile in a foster home, treatment foster home, group  
9 home, or residential care center for children and youth or in the home of a relative  
10 other than a parent, the agency shall present as evidence specific information  
11 showing all of the following:

12 (a) That continued custody of the Indian juvenile by the parent or Indian  
13 custodian is likely to result in serious emotional or physical damage to the Indian  
14 juvenile under s. 938.028 (4) (d) 1. *have been made*

15 (b) That *the county department or agency primarily responsible for providing*  
16 *services to the Indian juvenile has made* active efforts under s. 938.028 (4) (d) 2, to  
17 prevent the breakup of the Indian *juv-en-ls* family and that those efforts have proved  
18 unsuccessful.

19 (c) That the placement recommended is in compliance with the order of  
20 placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b) or,  
21 if that placement is not in compliance with that order, good cause, as described in s.  
22 938.028 (6) (d), for departing from that order.

23 **SECTION 301.** 938.345 (1m) of the statutes is created to read:

24 938.345 (1m) INDIAN JUVENILE; PLACEMENT PREFERENCES. (a) Subject to s.  
25 938.028 (6) (b), if the juvenile is an Indian juvenile who is in need of protection or

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services under s. 938.13 (4), (6), (6m), or (7) and who is being removed from the home of his or her parent or Indian custodian and placed outside that home, the court shall designate one of the placements specified in s. 938.028 (6) (a) 1. to 4. as the placement for the Indian juvenile, in the order of preference listed, unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

**SECTION 302.** 938.355 (2) (b) 6v. of the statutes is created to read:

938.355 (2) (b) 6v. If the juvenile is an Indian juvenile who is in need of protection or services under s. <sup>938.13</sup>~~938.13~~ (4), (6), (6m), or (7) and who is being removed from the home of his or her parent or Indian custodian and placed outside that home, a finding supported by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and a finding ~~as to whether the~~ county department or agency primarily responsible for providing services under a court order ~~has made~~ <sup>that</sup> active efforts under s. 938.028 (4) (d) 2. <sup>have been made</sup> to prevent the breakup of the Indian <sup>juvenile's</sup> family and that those efforts have proved unsuccessful. The findings under this subdivision shall be in addition to the findings under subd. 6., except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this subdivision and the findings under subd. 6. shall be considered to be the same findings. The findings under this subdivision are not required if they were made in a previous order in the proceeding unless a change in circumstances warrants new findings.

**SECTION 303.** 938.355 (2) (d) of the statutes is amended to read:

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## SECTION 303

1 938.355 (2) (d) The court shall provide a copy of the dispositional order to the  
2 juvenile's parent, guardian, legal custodian, or trustee and, if the juvenile is an  
3 Indian juvenile who has been removed from the home of his or her parent or Indian  
4 custodian and placed outside that home under s. 938.13 (4), (6), (6m), or (7), to the  
5 Indian juvenile's Indian custodian and tribe.

6 **SECTION 304.** 938.355 (2d) (c) 1. of the statutes is renumbered 938.355 (2d) (c)  
7 and amended to read:

8 938.355 (2d) (c) If the court finds that any of the circumstances under par. (b)  
9 1. to 4. applies with respect to a parent, the court shall hold a hearing under s. 938.38  
10 (4m) within 30 days after the date of that finding to determine the permanency plan  
11 for the juvenile. ~~If a hearing is held under this subdivision, the agency responsible~~  
12 ~~for preparing the permanency plan shall file the permanency plan with the court not~~  
13 ~~less than 5 days before the date of the hearing.~~

14 **SECTION 305.** 938.355 (2d) (c) 2. of the statutes <sup>as affected by 2009 Wisconsin Act 28,</sup> is repealed.

15 **SECTION 306.** 938.355 (2d) (c) 3. of the statutes is repealed.

16 **SECTION 307.** 938.355 (2d) (d) of the statutes is created to read:

17 938.355 (2d) (d) This subsection does not affect the requirement under sub. (2)  
18 (b) 6v. that the court include in a dispositional order removing an Indian juvenile who  
19 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from the home  
20 of his or her parent or Indian custodian and placing the juvenile outside that home  
21 a finding ~~as to whether the county department or agency primarily responsible for~~  
22 ~~providing services under a court order has made~~ <sup>that</sup> active efforts under s. 938.028 (4)  
23 <sup>have been made</sup> (d) 2. <sup>juvenile</sup> to prevent the breakup of the Indian family and that those efforts have proved  
24 unsuccessful.

25 **SECTION 308.** 938.355 (6) (an) 1. of the statutes is amended to read:

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1           938.355 (6) (an) 1. If a juvenile who has violated a municipal ordinance, other  
2           than an ordinance enacted under s. 118.163 (1m) or (2), violates a condition of a  
3           dispositional order imposed by the municipal court, the municipal court may petition  
4           the court assigned to exercise jurisdiction under this chapter and ch. 48 to impose  
5           on the juvenile the sanction under par. (d) 1. or the sanction under par. (d) 3., with  
6           monitoring by an electronic monitoring system. A sanction may be imposed under  
7           this subdivision only if, at the time of the judgment, the municipal court explained  
8           the conditions to the juvenile and informed the juvenile of those possible sanctions  
9           for a violation or if before the violation the juvenile has acknowledged in writing that  
10          he or she has read, or has had read to him or her, those conditions and possible  
11          sanctions and that he or she understands those conditions and possible sanctions.  
12          The petition shall contain a statement of whether the juvenile may be subject to the  
13          federal Indian Child Welfare Act, 25 USC ~~1911~~ 1901 to 1963, and, if the juvenile may  
14          be subject to that act, the names and addresses of the juvenile's Indian custodian, if  
15          any, and tribe, if known.

16           **SECTION 309.** 938.355 (6) (b) of the statutes is amended to read:

17           938.355 (6) (b) *Motion to impose sanction.* A motion for imposition of a sanction  
18           may be brought by the person or agency primarily responsible for the provision of  
19           dispositional services, the district attorney or corporation counsel, or the court that  
20           entered the dispositional order. If the court initiates the motion, that court is  
21           disqualified from holding a hearing on the motion. Notice of the motion shall be given  
22           to the juvenile, guardian ad litem, counsel, parent, guardian, legal custodian, and all  
23           parties present at the original dispositional hearing. The motion shall contain a  
24           statement of whether the juvenile may be subject to the federal Indian Child Welfare

**BILL****SECTION 309**

1 Act, 25 USC ~~1911~~ 1901 to 1963 and, if the juvenile may be subject to that act, the  
2 names and addresses of the juvenile's Indian custodian, if any, and tribe, if known.

3 **SECTION 310.** 938.355 (6) (bm) of the statutes is created to read:

4 938.355 **(6)** (bm) *Indian juvenile; notice.* If the person initiating the motion  
5 knows or has reason to know that the juvenile is an Indian juvenile who has been  
6 found to be in need of protection or services under s. 938.13 (4), (6m), or (7) or who  
7 has been adjudged to have violated a civil law or ordinance, other than an ordinance  
8 enacted under s. 118.163 (1m) or (2), and if the motion is seeking removal of the  
9 juvenile from the home of his or her parent or Indian custodian and placement of the  
10 juvenile in a place of nonsecure custody specified in par. (d) 1., notice under par. (b)  
11 to the Indian juvenile's parent shall be provided in the manner specified in s. 938.028  
12 (4) (a). In like manner, the court shall also notify the Indian juvenile's Indian  
13 custodian and tribe. No hearing may be held under par. (c) until at least 10 days after  
14 receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or,  
15 if the identity or location of the Indian juvenile's parent, Indian custodian, or tribe  
16 cannot be determined, until at least 10 days after receipt of the notice by the U.S.  
17 secretary of the interior. On request of the Indian juvenile's parent, Indian  
18 custodian, or tribe, the court shall grant a continuance of up to 20 additional days  
19 to enable the requester to prepare for the hearing.

20 **SECTION 311.** 938.355 (6) (cr) of the statutes is created to read:

21 938.355 **(6)** (cr) *Indian juvenile; findings.* In the case of an Indian juvenile who  
22 has been found to be in need of protection or services under s. ~~938.13~~ <sup>938.13</sup> (4), (6m), or (7)  
23 or who has been adjudged to have violated a civil law or ordinance, other than an  
24 ordinance enacted under s. 118.163 (1m) or (2), the court may not order the sanction  
25 of removal from the home of the Indian juvenile's parent or Indian custodian and

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1 placement in a place of nonsecure custody specified in par. (d) 1., unless the court  
2 finds by clear and convincing evidence, including the testimony of one or more  
3 qualified expert witnesses, that continued custody of the Indian juvenile by the  
4 parent or Indian custodian is likely to result in serious emotional or physical damage  
5 to the juvenile under s. 938.028 (4) (d) 1. and the court finds that ~~the agency primarily~~  
6 ~~responsible for providing services for the Indian juvenile has made~~ active efforts  
7 ~~under s. 938.028 (4) (d) 2 to prevent the breakup of the Indian family and that those~~  
8 efforts have proved unsuccessful. These findings are not required if they were made  
9 in the dispositional order under which the juvenile is being sanctioned. The findings  
10 under this paragraph shall be in addition to the findings under par. (cm), except that  
11 for the sole purpose of determining whether the cost of providing care for an Indian  
12 juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under  
13 this paragraph and the findings under par. (cm) shall be considered to be the same  
14 findings.

15 **SECTION 312.** 938.355 (6m) (am) 1. of the statutes is amended to read:

16 938.355 (6m) (am) 1. If a juvenile who has violated a municipal ordinance  
17 enacted under s. 118.163 (2) violates a condition of a dispositional order imposed by  
18 the municipal court, the municipal court may petition the court assigned to exercise  
19 jurisdiction under this chapter and ch. 48 to impose on the juvenile the sanction  
20 specified in par. (a) 1g. A sanction may be imposed under this subdivision only if, at  
21 the time of the judgment the municipal court explained the conditions to the juvenile  
22 and informed the juvenile of that possible sanction or if before the violation the  
23 juvenile has acknowledged in writing that he or she has read, or has had read to him  
24 or her, those conditions and that possible sanction and that he or she understands  
25 those conditions and that possible sanction. The petition shall contain a statement

**BILL****SECTION 312**

1 of whether the juvenile may be subject to the federal Indian Child Welfare Act, 25  
2 USC ~~1911~~ 1901 to 1963, and, if the juvenile may be subject to that act, the names and  
3 addresses of the juvenile's Indian custodian, if any, and tribe, if known.

4 **SECTION 313.** 938.355 (6m) (bm) of the statutes is created to read:

5 938.355 (**6m**) (bm) *Indian juvenile; notice.* If the person initiating the motion  
6 knows or has reason to know that the juvenile is an Indian juvenile who has been  
7 found to be in need of protection or services under s. 938.13 (6) or who has been  
8 adjudged to have violated an ordinance enacted under s. 118.163 (2), and if the  
9 motion is seeking removal of the juvenile from the home of his or her parent or Indian  
10 custodian and placement in a place of nonsecure custody specified in par. (a) 1g.,  
11 notice under par. (b) to the Indian juvenile's parent shall be provided in the manner  
12 specified in s. 938.028 (4) (a). In like manner, the court shall also notify the Indian  
13 juvenile's Indian custodian and tribe. No hearing may be held under par. (c) until  
14 at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian  
15 custodian, and tribe or, if the identity or location of the Indian juvenile's parent,  
16 Indian custodian, or tribe cannot be determined, until at least 10 days after receipt  
17 of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's  
18 parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20  
19 additional days to enable the requester to prepare for the hearing.

20 **SECTION 314.** 938.355 (6m) (c) of the statutes is amended to read:

21 938.355 (**6m**) (c) *Sanction hearing.* Before imposing a sanction under par. (a)  
22 or (ag), the court shall hold a hearing at which the juvenile is entitled to be  
23 represented by legal counsel and to present evidence. The Except as provided in par.  
24 (bm), the hearing shall be held within 15 days after the filing of a motion under par.  
25 (b).

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**SECTION 315.** 938.355 (6m) (cr) of the statutes is created to read:

938.355 (6m) (cr) *Indian juvenile; findings.* In the case of an Indian juvenile who has been found to be in need of protection or services under s. 938.13 (6) or who has been adjudged to have violated an ordinance enacted under s. 118.163 (2), the court may not order the sanction of removal from the home of the Indian juvenile's parent or Indian custodian and placement in a place of nonsecure custody specified in par. (a) 1g., unless the court finds by clear and convincing evidence, including the testimony of one or more qualified expert witnesses, that continued custody of the Indian juvenile by the parent or Indian custodian is likely to result in serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1. and the court finds that ~~the agency primarily responsible for providing services for the Indian juvenile has made~~ <sup>have been made</sup> active efforts under s. 938.028 (4) (d) 2. <sup>juveniles</sup> to prevent the breakup of the Indian family and that those efforts have proved unsuccessful. These findings are not required if they were made in the dispositional order under which the juvenile is being sanctioned. The findings under this paragraph shall be in addition to the findings under par. (cm), except that for the sole purpose of determining whether the cost of providing care for an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the findings under this paragraph and the findings under par. (cm) shall be considered to be the same findings.

**SECTION 316.** 938.357 (1) (am) 1. of the statutes is amended to read:

938.357 (1) (am) 1. If the proposed change in placement involves any change in placement other than a change in placement under par. (c), the person or agency primarily responsible for implementing the dispositional order or the district attorney shall cause written notice of the proposed change in placement to be sent to the juvenile, the parent, guardian, and legal custodian of the juvenile, and any



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1 foster parent, treatment foster parent, or other physical custodian described in s.  
2 48.62 (2) of the juvenile. If the juvenile is an Indian juvenile who has been removed  
3 from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m),  
4 or (7), written notice shall also be sent to the Indian juvenile's Indian custodian and  
5 tribe. The notice shall contain the name and address of the new placement, the  
reasons for the change in placement, a statement describing why the new placement  
is preferable to the present placement, and a statement of how the new placement  
satisfies objectives of the treatment plan ordered by the court.

**SECTION 317.** 938.357 (1) (am) 1g. of the statutes is created to read:

10 938.357 (1) (am) 1g. If the juvenile is an Indian juvenile who has been removed  
11 from the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m),  
12 or (7), and if the proposed change in placement would change the Indian juvenile's  
13 placement from a placement outside that home to another placement outside that  
14 home, a notice under subd. 1. shall also contain a statement as to whether the new  
15 placement is in compliance with the order of placement preference under s. 938.028  
16 (6) (a) or, if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance  
17 with that order, specific information showing good cause, as described in s. 938.028  
18 (6) (d), for departing from that order.

**SECTION 318.** 938.357 (1) (am) 2. of the statutes is amended to read:

20 938.357 (1) (am) 2. Any person receiving the notice under subd. 1. or notice of  
21 a specific foster or treatment foster placement under s. 938.355 (2) (b) 2. may obtain  
22 a hearing on the matter by filing an objection with the court within 10 days after  
23 receipt of the notice. Placements may not be changed until 10 days after that notice  
24 is sent to the court unless the parent, guardian, or legal custodian and, or Indian  
25 custodian, the juvenile, if 12 or more years of age, and the juvenile's tribe, if the

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1 juvenile is an Indian juvenile who has been removed from the home of his or her  
2 parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), sign written waivers  
3 of objection, except that changes in placement that were authorized in the  
4 dispositional order may be made immediately if notice is given as required under  
5 subd. 1. In addition, a hearing is not required for placement changes authorized in  
6 the dispositional order except when an objection filed by a person who received notice  
7 alleges that new information is available that affects the advisability of the court's  
8 dispositional order.

9 **SECTION 319.** 938.357 (1) (am) 3. of the statutes is amended to read:

10 938.357 (1) (am) 3. If the court changes the juvenile's placement from a  
11 placement outside the home to another placement outside the home, the change in  
12 placement order shall contain the applicable order under sub. (2v) (a) 1m. and the  
13 applicable statement under sub. (2v) (a) 2. If the court changes the placement of an  
14 Indian juvenile who has been removed from the home of his or her parent or Indian  
15 custodian under s. 938.13 (4), (6), (6m), or (7) from a placement outside that home  
16 to another placement outside that home, the change in placement order shall, in  
17 addition, comply with the order of placement preference under s. 938.028 (6) (a) or,  
18 if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s.  
19 938.028 (6) (d), for departing from that order.

20 **SECTION 320.** 938.357 (1) (c) 1m. of the statutes is created to read:

21 938.357 (1) (c) 1m. If the juvenile is an Indian juvenile who is in need of  
22 protection or services under s. 938.13 (4), (6), (6m), or (7), and if the proposed change  
23 in placement would change the placement of the juvenile from a placement in the  
24 home of his or her parent or Indian custodian to a placement outside that home, a  
25 request under subd. 1. shall also contain specific information showing that continued

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1 custody of the Indian juvenile by the parent or Indian custodian is likely to result in  
2 serious emotional or physical damage to the juvenile under s. 938.028 (4) (d) 1.,  
3) specific information showing that ~~the agency primarily responsible for~~  
4) ~~implementing the dispositional order has made~~ active efforts under s. 938.028 (4) (d)  
5) ~~2. to prevent the breakup of the Indian family and that those efforts have proved~~  
6 unsuccessful, a statement as to whether the new placement is in compliance with the  
7 order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6)  
8 (b) and, if the new placement is not in compliance with that order, specific  
9 information showing good cause, as described in s. 938.028 (6) (d), for departing from  
10 that order.

11 **SECTION 321.** 938.357 (1) (c) 2. of the statutes is amended to read:

12 938.357 (1) (c) 2. The court shall hold a hearing prior to ordering a change in  
13 placement requested under subd. 1. At least 3 days prior to the hearing, the court  
14 shall provide notice of the hearing, together with a copy of the request for the change  
15 in placement, to the juvenile, the parent, guardian, and legal custodian of the  
16 juvenile, and all parties that are bound by the dispositional order. ~~If, and, if the~~  
17 juvenile is an Indian juvenile who is in need of protection or services under s. 938.13  
18 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe. Subject to subd.  
19 2m., if all parties consent, the court may proceed immediately with the hearing.

20 **SECTION 322.** 938.357 (1) (c) 2m. of the statutes is created to read:

21 938.357 (1) (c) 2m. In a proceeding involving an Indian juvenile who is in need  
22 of protection or services under s. 938.13 (4), (6), (6m), or (7), if the proposed change  
23 in placement would change the placement of the juvenile from a placement in the  
24 home of his or her parent or Indian custodian to a placement outside that home notice  
25 under subd. 2. to the Indian juvenile's parent, Indian custodian, and tribe shall be

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provided in the manner specified in s. 938.028 (4) (a). No hearing on the request may be held until at least 10 days after receipt of the notice by the Indian juvenile's parent, Indian custodian, and tribe or, if the identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot be determined, until at least 10 days after receipt of the notice by the U.S. secretary of the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe, the court shall grant a continuance of up to 20 additional days to enable the requester to prepare for the hearing.

**SECTION 323.** 938.357 (1) (c) 3. of the statutes is amended to read:

938.357 (1) (c) 3. If the court changes the juvenile's placement from a placement in the juvenile's home to a placement outside the juvenile's home, the change in placement order shall contain the findings under sub. (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and, if in addition the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the home of his or her parent or Indian custodian to a placement outside that home, the change in placement order shall contain the findings under sub. (2v) (a) 4. and comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

**SECTION 324.** 938.357 (2m) (a) of the statutes is amended to read:

938.357 (2m) (a) *Request; information required.* The juvenile, the parent, guardian, or legal custodian of the juvenile, or any person or agency primarily bound

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1 by the dispositional order, other than the person or agency responsible for  
2 implementing the order, or, if the juvenile is an Indian juvenile who is in need of  
3 protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian  
4 custodian may request a change in placement under this paragraph. The request  
5 shall contain the name and address of the new placement requested and shall state  
6 what new information is available that affects the advisability of the current  
7 placement. If the proposed change in placement would change the placement of a  
8 juvenile placed in the juvenile's home to a placement outside the home, the request  
9 shall also contain specific information showing that continued placement of the  
10 juvenile in the juvenile's home would be contrary to the welfare of the juvenile and,  
11 unless any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies, specific  
12 information showing that the agency primarily responsible for implementing the  
13 dispositional order has made reasonable efforts to prevent the removal of the  
14 juvenile from the home, while assuring that the juvenile's health and safety are the  
15 paramount concerns. The request shall be submitted to the court. The court may  
16 also propose a change in placement on its own motion.

17 **SECTION 325.** 938.357 (2m) (am) of the statutes is created to read:

18 938.357 (2m) (am) *Indian juvenile; information required.* 1. If the proposed  
19 change of placement would change the placement of an Indian juvenile placed in the  
20 home of his or her parent or Indian custodian under s. 938.357 (4), (6), (6m), or (7)  
21 to a placement outside that home, a request under par. (a) shall also contain specific  
22 information showing that continued custody of the Indian juvenile by the parent or  
23 Indian custodian is likely to result in serious emotional or physical damage to the  
24 juvenile under s. 938.028 (4) (d) 1., specific information showing that the agency  
25 primarily responsible for implementing the dispositional order has made active

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have been made

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1 efforts under s. 938.028 (4) (d) 2, to prevent the breakup of the Indian family and that  
2 those efforts have proved unsuccessful, a statement as to whether the new placement  
3 is in compliance with the order of placement preference under s. 938.028 (6) (a) or,  
4 if applicable, s. 938.028 (6) (b) and, if the new placement is not in compliance with  
5 that order, specific information showing good cause, as described in s. 938.028 (6) (d),  
6 for departing from that order.

7 2. If the proposed change in placement would change the placement of an  
8 Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m),  
9 or (7) from a placement outside the home of his or her parent or Indian custodian to  
10 another placement outside that home, a request under par. (a) shall also contain a  
11 statement as to whether the new placement is in compliance with the order of  
12 placement preference under s. 938.028 (6) (a) or if applicable, s. 938.028 (6) (b) and,  
13 if the new placement is not in compliance with that order, specific information  
14 showing good cause, as described in s. 938.028 (6) (d), for departing from that order.

15 **SECTION 326.** 938.357 (2m) (b) of the statutes is amended to read:

16 938.357 (2m) (b) *Hearing; when required.* The court shall hold a hearing prior  
17 to ordering any change in placement requested or proposed under par. (a) if the  
18 request states that new information is available that affects the advisability of the  
19 current placement. A hearing is not required if the requested or proposed change in  
20 placement does not involve a change in placement of a juvenile placed in the  
21 juvenile's home to a placement outside the juvenile's home, written waivers of  
22 objection to the proposed change in placement are signed by all parties entitled to  
23 receive notice under ~~sub. (1) (am) 1.~~ this paragraph, and the court approves. If a  
24 hearing is scheduled, not less than 3 days before the hearing the court shall notify  
25 the juvenile, the parent, guardian, and legal custodian of the juvenile, any foster

**BILL****SECTION 326**

1 parent, treatment foster parent, or other physical custodian described in s. 48.62 (2)  
2 of the juvenile, ~~and all parties who are bound by the dispositional order at least 3~~  
3 ~~days prior to the hearing, and, if the juvenile is an Indian juvenile who is in need of~~  
4 ~~protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian~~  
5 ~~custodian and tribe.~~ A copy of the request or proposal for the change in placement  
6 shall be attached to the notice. ~~If Subject to par. (bm), if~~ all of the parties consent,  
7 the court may proceed immediately with the hearing.

8 **SECTION 327.** 938.357 (2m) (bm) of the statutes is created to read:

9 938.357 **(2m)** (bm) *Indian juvenile; notice.* If the juvenile is an Indian juvenile  
10 who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), and if the  
11 proposed change in placement would change the placement of the Indian juvenile  
12 from a placement in the home of his or her parent or Indian custodian to a placement  
13 outside that home, notice under par. (b) to the Indian juvenile's parent, Indian  
14 custodian, and tribe shall be provided in the manner specified in s. 938.028 (4) (a).  
15 No hearing on the request or proposal may be held until at least 10 days after receipt  
16 of the notice by the Indian juvenile's parent, Indian custodian, and tribe or, if the  
17 identity or location of the Indian juvenile's parent, Indian custodian, or tribe cannot  
18 be determined, until at least 10 days after receipt of the notice by the U.S. secretary  
19 of the interior. On request of the Indian juvenile's parent, Indian custodian, or tribe,  
20 the court shall grant a continuance of up to 20 additional days to enable the requester  
21 to prepare for the hearing.

22 **SECTION 328.** 938.357 (2m) (c) of the statutes is renumbered 938.357 (2m) (c)

23 1. and amended to read:

24 938.357 **(2m)** (c) *Findings required.* 1. If the court changes the juvenile's  
25 placement from a placement in the juvenile's home to a placement outside the

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juvenile's home, the change in placement order shall contain the findings under sub. (2v) (a) 1., the applicable order under sub. (2v) (a) 1m., the applicable statement under sub. (2v) (a) 2., and if in addition the court finds that any of the circumstances under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the determination under sub. (2v) (a) 3. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the home of his or her parent or Indian custodian to a placement outside that home, the change in placement order shall, in addition, contain the findings under sub. (2v) (a) 4. and comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from that order.

2. If the court changes the juvenile's placement from a placement outside the home to another placement outside the home, the change in placement order shall contain the applicable order under sub. (2v) (a) 1m. and the applicable statement under sub. (2v) (a) 2. If the court changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement outside the home of his or her parent or Indian custodian to another placement outside that home, the change in placement order shall, in addition, comply with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), unless the court finds good cause, as described in s. 938.028 (6) (d), for departing from the order.

**SECTION 329.** 938.357 (2v) (a) 4. of the statutes is created to read:

938.357 (2v) (a) 4. If the change in placement order changes the placement of an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6), (6m), or (7) from a placement in the home of his or her parent or Indian custodian to



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1 a placement outside that home, a finding supported by clear and convincing  
2 evidence, including the testimony of one or more qualified expert witnesses, that  
3 continued custody of the Indian juvenile by the parent or Indian custodian is likely  
4 to result in serious emotional or physical damage to the juvenile under s. 938.028 (4)

5 (d) 1. and a finding that ~~the agency primarily responsible for implementing the~~  
6 ~~dispositional order has made~~ active efforts under s. 938.028 (4) (d) 2. ~~to prevent the~~  
7 ~~breakup of the Indian family~~ and that those efforts have proved unsuccessful. The

8 findings under this subdivision shall be in addition to the findings under subd. 1.,  
9 except that for the sole purpose of determining whether the cost of providing care for  
10 an Indian juvenile is eligible for reimbursement under 42 USC 670 to 679b, the  
11 findings under this subdivision and the findings under subd. 1. shall be considered  
12 to be the same findings. The findings under this subdivision are not required if they  
13 were made in a previous order in the proceeding unless a change in circumstances  
14 warrants new findings.

15 **SECTION 330.** 938.357 (2v) (c) 1. of the statutes is renumbered 938.357 (2v) (c)  
16 and amended to read:

17 938.357 (2v) (c) If the court finds under par. (a) 3. that any of the circumstances  
18 under s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold  
19 a hearing under s. 938.38 (4m) within 30 days after the date of that finding to  
20 determine the permanency plan for the juvenile. ~~If a hearing is held under this~~  
21 ~~paragraph, the agency responsible for preparing the permanency plan shall file the~~  
22 ~~permanency plan with the court at least 5 days before the date of the hearing.~~

23 **SECTION 331.** 938.357 (2v) (c) 2. of the statutes ~~is repealed.~~ *as affected by 2009 Wisconsin Act 28,*

24 **SECTION 332.** 938.357 (2v) (c) 3. of the statutes ~~is repealed.~~

25 **SECTION 333.** 938.363 (1) (a) of the statutes is amended to read:

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1           938.363 (1) (a) A juvenile, the juvenile's parent, guardian, or legal custodian,  
2 any person or agency bound by a dispositional order, ~~or~~ the district attorney or  
3 corporation counsel in the county in which the dispositional order was entered or, if  
4 the juvenile is an Indian juvenile who is in need of protection or services under s.  
5 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian may request a  
6 revision in the order that does not involve a change in placement, including a revision  
7 with respect to the amount of child support to be paid by a parent. The court may  
8 also propose a revision. The request or court proposal shall set forth in detail the  
9 nature of the proposed revision and what new information is available that affects  
10 the advisability of the court's disposition. The request or court proposal shall be  
11 submitted to the court. The court shall hold a hearing on the matter prior to any  
12 revision of the dispositional order if the request or court proposal indicates that new  
13 information is available that affects the advisability of the court's dispositional order,  
14 unless written waivers of objections to the revision are signed by all parties entitled  
15 to receive notice and the court approves.

16           **SECTION 334.** 938.363 (1) (b) of the statutes is amended to read:

17           938.363 (1) (b) If a hearing is held, at least 3 days before the hearing the court  
18 shall notify the juvenile, the juvenile's parent, guardian, and legal custodian, all  
19 parties bound by the dispositional order, the juvenile's foster parent, treatment  
20 foster parent, or other physical custodian described in s. 48.62 (2), and the district  
21 attorney or corporation counsel in the county in which the dispositional order was  
22 entered at least 3 days prior to the hearing. If the juvenile is an Indian juvenile who  
23 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the court shall  
24 also notify the Indian juvenile's Indian custodian and, if that juvenile is placed  
25 outside the home of his or her parent or Indian custodian, the Indian juvenile's tribe.

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1 A copy of the request or proposal shall be attached to the notice. If all parties consent,  
2 the court may proceed immediately with the hearing. No revision may extend the  
3 effective period of the original order, or revise an original order under s. 938.34 (3)  
4 (f) or (6) (am) to impose more than a total of 30 days of detention, nonsecure custody,  
5 or inpatient treatment on a juvenile.

6 **SECTION 335.** 938.365 (1m) of the statutes is amended to read:

7 938.365 (1m) REQUEST FOR EXTENSION. The parent, juvenile, guardian, legal  
8 custodian, any person or agency bound by the dispositional order, the district  
9 attorney or corporation counsel in the county in which the dispositional order was  
10 entered, ~~or~~ the court on its own motion, or, if the juvenile is an Indian juvenile who  
11 is in need of protection or services under s. 938.13 (4), (6), (6m), or (7), the Indian  
12 juvenile's Indian custodian may request an extension of an order under s. 938.355.  
13 The request shall be submitted to the court ~~which~~ that entered the order. An order  
14 under s. 938.355 for placement of a juvenile in detention, nonsecure custody, or  
15 inpatient treatment under s. 938.34 (3) (f) or (6) (am) may not be extended. Other  
16 orders or portions of orders under s. 938.355 may be extended only as provided in this  
17 section.

18 **SECTION 336.** 938.365 (2) of the statutes is amended to read:

19 938.365 (2) NOTICE. No order may be extended without a hearing. The court  
20 shall ~~notify~~ provide notice of the time and place of the hearing to the juvenile or the  
21 juvenile's guardian ad litem or counsel, the juvenile's parent, guardian, and legal  
22 custodian, all of the parties present at the original hearing, the juvenile's foster  
23 parent, treatment foster parent, or other physical custodian described in s. 48.62 (2),  
24 and the district attorney or corporation counsel in the county in which the  
25 dispositional order was entered ~~of the time and place of the hearing.~~ If the juvenile

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1 is an Indian juvenile who is in need of protection or services under s. 938.13 (4), (6),  
2 (6m), or (7), the court shall also notify the Indian juvenile's Indian custodian and, if  
3 that juvenile is placed outside the home of his or her parent or Indian custodian, the  
4 Indian juvenile's tribe.

5 **SECTION 337.** 938.365 (2g) (b) 4. of the statutes is created to read:

6 938.365 (2g) (b) 4. If the juvenile is an Indian juvenile who is placed outside  
7 the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7),  
8 specific information showing that active efforts under s. 938.028 (4) (d) 2. have been  
9 made to prevent the breakup of the Indian <sup>juvenile's</sup> family and that those efforts have proved  
10 unsuccessful.

11 **SECTION 338.** 938.365 (2m) (a) 1. of the statutes is amended to read:

12 938.365 (2m) (a) 1. Any party may present evidence relevant to the issue of  
13 extension. If the juvenile is placed outside of his or her home, the person or agency  
14 primarily responsible for providing services to the juvenile shall present as evidence  
15 specific information showing that the person or agency has made reasonable efforts  
16 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile  
17 to the home is the goal of the permanency plan and any of the circumstances under  
18 s. 938.355 (2d) (b) 1. to 4. applies. If an Indian juvenile is placed outside the home  
19 of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the person  
20 or agency primarily responsible for providing services to the Indian juvenile shall  
21 also present as evidence specific information showing that the person or agency has  
22 made active efforts under s. 938.028 (4) (d) 2. to prevent the breakup of the Indian  
23 family and that those efforts have proved unsuccessful.

24 1m. The court shall make findings of fact and conclusions of law based on the  
25 evidence. The findings of fact shall include a finding as to whether reasonable efforts

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1 were made by the agency primarily responsible for providing services to the juvenile  
2 to achieve the goal of the juvenile's permanency plan, unless return of the juvenile  
3 to the home is the goal of the permanency plan and the court finds that any of the  
4 circumstances under s. 938.355 (2d) (b) 1. to 4. applies. If the juvenile is an Indian  
5 juvenile who is placed outside the home of his or her parent or Indian custodian  
6 under s. 938.13 (4), (6), (6m), or (7), the findings of fact shall also include a finding  
7 as to whether <sup>that</sup> ~~active efforts~~ <sup>active efforts</sup> under s. 938.028 (4) (d) 2. were made to prevent the  
8 <sup>juvenile's</sup> ~~breakup of the Indian family and~~ <sup>whether</sup> ~~whether~~ those efforts have proved  
9 unsuccessful. An order shall be issued under s. 938.355.

10 **SECTION 339.** 938.365 (2m) (a) 3. of the statutes is amended to read:

11 938.365 (2m) (a) 3. The court shall make the findings under subd. 1. 1m.  
12 relating to reasonable efforts to achieve the goal of the juvenile's permanency plan  
13 and the findings under subd. 2. on a case-by-case basis based on circumstances  
14 specific to the juvenile and shall document or reference the specific information on  
15 which those findings are based in the order issued under s. 938.355. An order that  
16 merely references subd. 1. 1m. or 2. without documenting or referencing that specific  
17 information in the order or an amended order that retroactively corrects an earlier  
18 order that does not comply with this subdivision is not sufficient to comply with this  
19 subdivision.

20 **SECTION 340.** 938.365 (2m) (ad) 1. of the statutes is renumbered 938.365 (2m)  
21 (ad) and amended to read:

22 938.365 (2m) (ad) If the court finds that any of the circumstances under s.  
23 938.355 (2d) (b) 1. to 4. applies with respect to a parent, the court shall hold a hearing  
24 under s. 938.38 (4m) within 30 days after the date of that finding to determine the  
25 permanency plan for the juvenile. ~~If a hearing is held under this subdivision, the~~

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1 agency responsible for preparing the permanency plan shall file the permanency  
2 plan with the court not less than 5 days before the date of the hearing.

3 **SECTION 341.** 938.365 (2m) (ad) 2. of the statutes is repealed. <sup>as affected by 2009 Wisconsin Act 28</sup>

4 **SECTION 342.** 938.365 (2m) (ag) of the statutes is amended to read:

5 938.365 (2m) (ag) The court shall give a foster parent, treatment foster parent,  
6 or other physical custodian described in s. 48.62 (2) who is notified of a hearing under  
7 ~~par. (ad) 2. or sub. (2)~~ an opportunity to be heard at the hearing by permitting the  
8 foster parent, treatment foster parent, or other physical custodian to make a written  
9 or oral statement during the hearing, or to submit a written statement prior to the  
10 hearing, relevant to the issue of extension. A foster parent, treatment foster parent,  
11 or other physical custodian who receives notice of a hearing under ~~par. (ad) 2. or sub.~~  
12 (2) and an opportunity to be heard under this paragraph does not become a party to  
13 the proceeding on which the hearing is held solely on the basis of receiving that notice  
14 and having the opportunity to be heard.

15 **SECTION 343.** 938.38 (3) (intro.) of the statutes is amended to read:

16 938.38 (3) TIME. (intro.) Subject to s. 938.355 (2d) (c) 1., the agency shall file  
17 the permanency plan with the court within 60 days after the date on which the  
18 juvenile was first removed from his or her home, except under either of the following  
19 conditions:

20 **SECTION 344.** 938.38 (4) (i) of the statutes is created to read:

21 938.38 (4) (i) If the juvenile is an Indian juvenile who is placed outside the home  
22 of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), all of the  
23 following:

24 1. The name, address, and telephone number of the Indian juvenile's Indian  
25 custodian and tribe.

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juvenile ✓

1           2. A description of the remedial services and rehabilitation programs offered  
2 under s. 938.028 (4) (d) 2. in an effort to prevent the breakup of the Indian family.

3           3. A statement as to whether the Indian juvenile's placement is in compliance  
4 with the order of placement preference under s. 938.028 (6) (a) or, if applicable, s.  
5 938.028 (6) (b) and, if the placement is not in compliance with that order, a statement  
6 as to whether there is good cause, as described in s. 938.028 (6) (d), for departing from  
7 that order.

8           **SECTION 345.** 938.38 (4m) of the statutes is created to read:

9           938.38 (4m) PERMANENCY PLAN DETERMINATION HEARING. (a) If in a proceeding  
10 under s. 938.21, 938.32, 938.355, 938.357, or 938.365 the court finds that any of the  
11 circumstances specified in s. 938.355 (2d) (b) 1. to 4. applies with respect to a parent,  
12 the court shall hold a hearing within 30 days after the date of that finding to  
13 determine the permanency plan for the juvenile. If a hearing is held under this  
14 paragraph, the agency responsible for preparing the permanency plan shall file the  
15 permanency plan with the court not less than 5 days before the hearing.

16           (b) At least 10 days before the hearing the court shall notify the juvenile, any  
17 parent, guardian, and legal custodian of the juvenile, any foster parent, treatment  
18 foster parent, or other physical custodian described in s. 48.62 (2) of the juvenile and,  
19 if the juvenile is an Indian juvenile who is or is alleged to be in need of protection or  
20 services under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian  
21 and tribe of the time, place, and purpose of the hearing.

22           (c) The court shall give a foster parent, treatment foster parent, or other  
23 physical custodian described in s. 48.62 (2) who is notified of a hearing under par. (b)  
24 a right to be heard at the hearing by permitting the foster parent, treatment foster  
25 parent, or other physical custodian to make a written or oral statement during the

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1 hearing, or to submit a written statement prior to the hearing, relevant to the issues  
2 to be determined at the hearing. The foster parent, treatment foster parent, or other  
3 physical custodian does not become a party to the proceeding on which the hearing  
4 is held solely on the basis of receiving that notice and right to be heard.

5 **SECTION 346.** 938.38 (5) (b) of the statutes is amended to read:

6 938.38 (5) (b) The court or the agency shall notify ~~the parents of the juvenile,~~  
7 the juvenile, if he or she is 10 years of age or older, ~~and, the juvenile's parent,~~  
8 guardian, and legal custodian; the juvenile's foster parent, the juvenile's treatment  
9 foster parent, the operator of the facility in which the juvenile is living, or the relative  
10 with whom the juvenile is living; and, if the juvenile is an Indian juvenile who is  
11 placed outside the home of his or her parent or Indian custodian under s. 938.13 (4),  
12 (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe of the date, time, and  
13 place of the review, of the issues to be determined as part of the review, and of the  
14 fact that they may have an opportunity to be heard at the review by submitting  
15 written comments not less than 10 working days before the review or by  
16 participating at the review. The court or agency shall notify the person representing  
17 the interests of the public, the juvenile's counsel, and the juvenile's guardian ad litem  
18 of the date of the review, of the issues to be determined as part of the review, and of  
19 the fact that they may submit written comments not less than 10 working days before  
20 the review. The notices under this paragraph shall be provided in writing not less  
21 than 30 days before the review and copies of the notices shall be filed in the juvenile's  
22 case record.

23 **SECTION 347.** 938.38 (5) (c) 8. of the statutes is created to read:

24 938.38 (5) (c) 8. If the juvenile is an Indian juvenile who is placed outside the  
25 home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7),



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1 whether active efforts under s. 938.028 (4) (d) 2. were made ~~by the agency~~ to prevent  
2 the breakup of the Indian family, whether those efforts have proved unsuccessful,  
3 whether the Indian child's placement is in compliance with the order of placement  
4 preference under s. 938.028 (6) (a) or, if applicable, s. 938.028 (6) (b), and, if the  
5 placement is not in compliance with that order, whether there is good cause, as  
6 described in s. 938.028 (6) (d), for departing from that order.

7 **SECTION 348.** 938.38 (5) (d) of the statutes is amended to read:

8 938.38 (5) (d) Notwithstanding s. 938.78 (2) (a), the agency that prepared the  
9 permanency plan shall, at least 5 days before a review by a review panel, provide to  
10 each person appointed to the review panel, the juvenile's parent, guardian, and legal  
11 custodian, the person representing the interests of the public, the juvenile's counsel  
12 and, the juvenile's guardian ad litem, and, if the juvenile is an Indian juvenile who  
13 is placed outside the home of his or her parent or Indian custodian under s. 938.13  
14 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe a copy of the  
15 permanency plan and any written comments submitted under par. (b).  
16 Notwithstanding s. 938.78 (2) (a), a person appointed to a review panel, the person  
17 representing the interests of the public, the juvenile's counsel and, the juvenile's  
18 guardian ad litem, and, if the juvenile is an Indian juvenile who is placed outside the  
19 home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the  
20 Indian juvenile's Indian custodian and tribe may have access to any other records  
21 concerning the juvenile for the purpose of participating in the review. A person  
22 permitted access to a juvenile's records under this paragraph may not disclose any  
23 information from the records to any other person.

24 **SECTION 349.** 938.38 (5) (e) of the statutes is amended to read:

**BILL**

1 938.38 (5) (e) Within 30 days, the agency shall prepare a written summary of  
2 the determinations under par. (c) and shall provide a copy to the court that entered  
3 the order; the juvenile or the juvenile's counsel <sup>(plain)</sup> or guardian ad litem; the person  
4 representing the interests of the public; the juvenile's parent or, guardian ~~and, or~~  
5 legal custodian; the juvenile's foster parent, the juvenile's treatment foster parent,  
6 or the operator of the facility where the juvenile is living; and, if the juvenile is an  
7 Indian juvenile who is placed outside the home of his or her parent or Indian  
8 custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian  
9 and tribe.

10 **SECTION 350.** 938.38 (5m) (b) of the statutes is amended to read:

11 938.38 (5m) (b) Not less than 30 days before the date of the hearing, the court  
12 shall notify the juvenile; the juvenile's parent, guardian, and legal custodian; the  
13 juvenile's foster parent or treatment foster parent, the operator of the facility in  
14 which the juvenile is living, or the relative with whom the juvenile is living; the  
15 juvenile's counsel; <sup>↓</sup> and the juvenile's guardian ad litem; the agency that prepared the  
16 permanency plan; ~~and~~ the person representing the interests of the public; and, if the  
17 juvenile is an Indian juvenile who is placed outside the home of his or her parent or  
18 Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian  
19 custodian and tribe of the date, time, and place of the hearing.

20 **SECTION 351.** 938.38 (5m) (d) of the statutes is amended to read:

21 938.38 (5m) (d) At least 5 days before the date of the hearing the agency that  
22 prepared the permanency plan shall provide a copy of the permanency plan and any  
23 written comments submitted under par. (c) to the court, to the juvenile's parent,  
24 guardian, and legal custodian, to the person representing the interests of the public,  
25 ~~and~~ to the juvenile's counsel or guardian ad litem, and, if the juvenile is an Indian

**BILL****SECTION 351**

1 juvenile who is placed outside the home of his or her parent or Indian custodian  
2 under s. 938.13 (4), (6), (6m), or (7), to the Indian juvenile's Indian custodian and  
3 tribe. Notwithstanding s. 938.78 (2) (a), the person representing the interests of the  
4 public ~~and,~~ the juvenile's counsel or guardian ad litem, and, if the juvenile is an  
5 Indian juvenile who is placed outside the home of his or her parent or Indian  
6 custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian  
7 and tribe may have access to any other records concerning the juvenile for the  
8 purpose of participating in the review. A person permitted access to a juvenile's  
9 records under this paragraph may not disclose any information from the records to  
10 any other person.

11 **SECTION 352.** 938.38 (5m) (e) of the statutes is amended to read:

12 938.38 **(5m)** (e) After the hearing, the court shall make written findings of fact  
13 and conclusions of law relating to the determinations under sub. (5) (c) and shall  
14 provide a copy of those findings of fact and conclusions of law to the juvenile; the  
15 juvenile's parent, guardian, and legal custodian; the juvenile's foster parent or  
16 treatment foster parent, the operator of the facility in which the juvenile is living,  
17 or the relative with whom the juvenile is living; the agency that prepared the  
18 permanency plan; ~~and the person representing the interests of the public; and, if the~~  
19 juvenile is an Indian juvenile who is placed outside the home of his or her parent or  
20 Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian  
21 custodian and tribe. The court shall make the findings specified in sub. (5) (c) 7. on  
22 a case-by-case basis based on circumstances specific to the juvenile and shall  
23 document or reference the specific information on which those findings are based in  
24 the findings of fact and conclusions of law prepared under this paragraph. Findings  
25 of fact and conclusions of law that merely reference sub. (5) (c) 7. without

**BILL**

1 documenting or referencing that specific information in the findings of fact and  
2 conclusions of law or amended findings of fact and conclusions of law that  
3 retroactively correct earlier findings of fact and conclusions of law that do not comply  
4 with this paragraph are not sufficient to comply with this paragraph.

5 **SECTION 353.** 938.538 (6m) (a) 1. of the statutes is repealed.

6 **SECTION 354.** 938.538 (6m) (a) 4. of the statutes is amended to read:

7 938.538 **(6m)** (a) 4. "Minority group member" means a Black, a Hispanic, or an  
8 American Indian person.

9 **SECTION 355. Initial applicability.**

10 (1) INDIAN CHILD CUSTODY PROCEEDINGS. This act first applies to an Indian child  
11 custody proceeding commenced on the effective date of this subsection.

12 (END)

Insert  
171-4

12  
Insert  
171-11

juvenile's parent, guardian, and legal custodian; the juvenile's foster parent, the operator of the facility in which the juvenile is living, or the relative with whom the juvenile is living; the agency that prepared the permanency plan; the person representing the interests of the public; and, if the juvenile is an Indian juvenile who is placed outside the home of his or her parent or Indian custodian under s. 938.13 (4), (6), (6m), or (7), the Indian juvenile's Indian custodian and tribe. The court shall make the findings specified in sub. (5) (c) 7. on a case-by-case basis based on circumstances specific to the juvenile and shall document or reference the specific information on which those findings are based in the findings of fact and conclusions of law prepared under this paragraph. Findings of fact and conclusions of law that merely reference sub. (5) (c) 7. without documenting or referencing that specific information in the findings of fact and conclusions of law or amended findings of fact and conclusions of law that retroactively correct earlier findings of fact and conclusions of law that do not comply with this paragraph are not sufficient to comply with this paragraph.

(END OF INSERT)

(INSERT 171-11)

**SECTION 45. Effective dates.** This act takes effect on the day after publication, except as follows:

(1) TREATMENT FOSTER HOMES. The amendment of sections 48.028 (2) (e) and (f) and (7) (b) 2. and 3., 48.335 (3j) (intro.), 48.38 (4m) (b) and (c), 938.028 (2) (c) and (6) (a) 2. and 3., 938.335 (3j) (intro.), and 938.38 (4m) (b) and (c) of the statutes and the repeal and recreation of sections 48.27 (3) (a) 1., 48.357 (1) (am) 1. and (2m) (b), 48.363 (1) (b), 48.365 (2) and (2m) (ag), 48.38 (5) (b) and (e) and (5m) (b) and (e), 48.428

1 (2) (a) and (b), 48.43 (5m), 48.63 (1) and (4), 48.645 (1) (a) and (2) (a) 1., 3., and 4. and  
2 (b), ~~48.635 (5) (a)~~ 938.27 (3) (a) 1., 938.357 (1) (am) 1. and 2. and (2m) (b), 938.363  
3 (1) (b), 938.365 (2) and (2m) (ag), and 938.38 (5) (b) and (e) and (5m) (b) and (e) of the  
4 statutes take effect on the date stated in the notice provided by the secretary of  
5 children and families and published in the Wisconsin Administrative Register under  
6 section 48.62 (9) of the statutes, as created by 2009 Wisconsin Act 28.

1 ~~SECTION 48.27~~ (3) (a) 1. of the statutes, as affected by 2009 Wisconsin Acts  
2 28 and .... (this act), is repealed and recreated to read:

3 48.27 (3) (a) 1. If the petition that was filed relates to facts concerning a  
4 situation under s. 48.13 or a situation under s. 48.133 involving an expectant mother  
5 who is a child, the court shall notify, under s. 48.273, the child, any parent, guardian,  
6 and legal custodian of the child, any foster parent or other physical custodian  
7 described in s. 48.62 (2) of the child, the unborn child by the unborn child's guardian  
8 ad litem, if applicable, and any person specified in par. (b), (d), or (e), if applicable,  
9 of all hearings involving the child except hearings on motions for which notice must  
10 be provided only to the child and his or her counsel. If parents who are entitled to  
11 notice have the same place of residence, notice to one constitutes notice to the other.  
12 The first notice to any interested party, foster parent, or other physical custodian  
13 described in s. 48.62 (2) shall be in writing and may have a copy of the petition  
14 attached to it. Notices of subsequent hearings may be given by telephone at least 72  
15 hours before the time of the hearing. The person giving telephone notice shall place  
16 in the case file a signed statement of the time notice was given and the person to  
17 whom he or she spoke.

(END OF INSERT)

141-13

(INSERT 48-3)

Juvenile in need of protection or  
services under s. 938.13 (4), (6), (6m),  
or (7)

18 938 SECTION ~~48.31~~ (5) of the statutes is created to read:

19 ~~48.31~~ (5) If the ~~child~~ <sup>Juvenile</sup> is an Indian child, the court ~~or jury~~ shall also determine  
20 at the fact-finding hearing whether continued custody of the Indian ~~child~~ <sup>Juvenile</sup> by the  
21 Indian ~~child's~~ <sup>Juvenile's</sup> parent or Indian custodian is likely to result in serious emotional or  
22 physical damage to the Indian ~~child~~ <sup>Juvenile</sup> under s. ~~48.028~~ <sup>938</sup> (4) (d) 1. and whether active

Insert  
141-3  
- 4 -  
938.13 (4), (6), (6m), or (7)  
Juvenals  
938

1 efforts under s. ~~48.028~~ (4) (d) 2. have been made to prevent the breakup of the Indian  
2 ~~child's~~ family and whether those efforts have proved unsuccessful, unless partial  
3 summary judgment on the allegations under s. ~~48.47 or 48.12~~ is granted, in which  
4 case the court shall make those determinations at the dispositional hearing.

(END OF INSERT)

(INSERT 51-14)

5 ~~SECTION 48.335~~ (3j) (intro.) of the statutes, as created by 2009 Wisconsin Act  
6 .... (this act), is amended to read:

7 48.335 (3j) (intro.) At hearings under this section involving an Indian child, if  
8 the agency, as defined in s. 48.38 (1) (a), is recommending removal of the Indian child  
9 from the home of his or her parent or Indian custodian and placement of the Indian  
10 child in a foster home, ~~treatment foster home~~, group home, or residential care center  
11 for children and youth or in the home of a relative other than a parent, the agency  
12 shall present as evidence specific information showing all of the following:

(END OF INSERT)

(INSERT 54-18)

13 ~~SECTION 48.357~~ (1) (am) 1. of the statutes, as affected by 2009 Wisconsin Acts  
14 28 and .... (this act), is repealed and recreated to read:

15 48.357 (1) (am) 1. If the proposed change in placement involves any change in  
16 placement other than a change in placement specified in par. (c), the person or agency  
17 primarily responsible for implementing the dispositional order, the district attorney,  
18 or the corporation counsel shall cause written notice of the proposed change in  
19 placement to be sent to the child, the parent, guardian, and legal custodian of the  
20 child, any foster parent or other physical custodian described in s. 48.62 (2) of the



## **Duerst, Christina**

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**From:** Kahn, Carrie  
**Sent:** Wednesday, August 26, 2009 1:53 PM  
**To:** Duerst, Christina  
**Subject:** RE: LRB 09-0150/3 attached

Christina,

Thanks for sending this to me last week. I need to now have this bill jacketed for the Senate. Can you help me with this?

Thanks!

Carrie Kahn  
Legislative Assistant  
State Senator Bob Jauch  
P.O. Box 7882  
Madison, WI 53707-7882

608-266-3510  
1-800-469-6562

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**From:** Duerst, Christina  
**Sent:** Wednesday, August 19, 2009 12:11 PM  
**To:** Kahn, Carrie  
**Subject:** LRB 09-0150/3 attatched

<< File: 09-0150/3 >>

## Barman, Mike

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**From:** Barman, Mike  
**Sent:** Friday, August 28, 2009 10:43 AM  
**To:** Renk, Jeff  
**Subject:** RE: LRB # 0150/3  
**Attachments:** 09-01503.pdf

Jeff,

Attached is the LRB draft you requested ... got the OK from Trevor Flanery in Senator Jauch's before sending.

Have a great weekend !!!!

**Mike Barman** (Senior Program Assistant)

State of Wisconsin - Legislative Reference Bureau

Legal Section - Front Office

1 East Main Street, Suite 200, Madison, WI 53703

(608) 266-3561 / [mike.barman@legis.wisconsin.gov](mailto:mike.barman@legis.wisconsin.gov)

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**From:** Renk, Jeff  
**Sent:** Friday, August 28, 2009 10:26 AM  
**To:** Barman, Mike  
**Subject:** LRB # 0150/3

Hi Mike,

Would it be possible to get an electronic copy of LRB # 0150/3? The author, Senator Jauch, has scheduled a hearing on it, and according to Senate Rules, we need a copy of any LRBs that are scheduled for a public hearing. Their office did provide us with a hard copy, but it's 197 pages long, and I don't want to have to scan it in. Thanks.

Jeff

08/28/2009